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OFFICE OF PETITIONS

In re Application of :
Dasseux et al. :
Application No. 10/743,950 : DECISION ON PETITION
Filed: December 24, 2003 :
Atty Docket No. 10173-112-999 :

This is a decision on the "PETITION UNDER 37 C.F.R. §§ 1.181 AND 1.17(h) IN RESPONSE TO NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION AND EVIDENCE OF DEPOSIT" filed October 20, 2004. Applicants petition to have page 125 entered into the file of the above-identified application and to maintain the original filing date of December 24, 2003.

Application papers in the above-identified application were filed on December 24, 2003. However, on September 13, 2004, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Item(s) in a Nonprovisional Application." Applicants were notified that the application papers had been accorded a filing date; however, page 125 of the specification appeared to have been omitted from the application.

In response, applicants timely filed the instant petition. Applicants assert that page 125 was not missing from the application. In support thereof, applicants submit *inter alia* a copy of the front and back of their return postcard receipt. Alternatively, applicants submit that page 125 would not constitute new matter as page 125 was incorporated by reference to a prior filed application. Applicants supplied a copy of missing page 125.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received by hand carry in the Office of Initial Patent Examination (OIPE) on December 24, 2003; 2) it specifically identifies the items being filed, including "Application 246 pages" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioner has shown that the items denoted, including the 246 pages of application, were filed on June 29, 2004.

The application papers already considered received in the Office on December 24, 2003, were reviewed along with the missing page of specification submitted on petition. These papers together

constitute the items described on the postcard receipt as "Application 246 pages." The pages of the application were specifically numbered 1-246 as indicated on the postcard. Petitioner has shown that p. 125 of the specification was among the items present in the application on the date of deposit and should be included in the original application papers.

Accordingly, the petition is **GRANTED**.


Given the basis for granting the petition, the petition fee has been refunded to Deposit Account No. 50-3013, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of December 24, 2003, using the application papers received in the Office on that date and the missing page of specification, p. 125, re-supplied on petition filed October 20, 2004.

Applicants will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions